

SEC87

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
U.S. SECURITIES AND EXCHANGE :
COMMISSION, :
vs. Plaintiff, : Civil Action No. 19-cv-5244 (AKH)
KIK INTERACTIVE INC., :
Defendant. :
----- X

DEFENDANTS' SECOND AMENDED RULE 26(a)(1) INITIAL DISCLOSURES

Defendant Kik Interactive, Inc. ("Kik" or the "Company") provides the following supplemental disclosures pursuant to Rule 26(e) of the Federal Rules of Civil Procedure. The following amended disclosures are based on information reasonably available to Kik as of the date of these disclosures. Kik reserves the right to supplement, alter, or amend these disclosures as discovery progresses and as additional information becomes available through further investigation and discovery. Additional supplemental disclosures will be made to the extent that they are not mooted by future discovery responses or have not otherwise been made known to the Securities and Exchange Commission (the "Commission") during the discovery process or in writing.

By making these disclosures, Kik is not waiving its rights to object to any discovery that the Commission may serve, nor is Kik making a representation that it has identified every document, tangible thing, or witness that may possibly be relevant to this lawsuit. These disclosures represent a good-faith effort to identify the information Kik reasonably believes is called for by Rule 26(a)(1).

**I. INDIVIDUALS OR ENTITIES LIKELY TO HAVE DISCOVERABLE INFORMATION
(RULE 26(a)(1)(A)(i))**

Subject to the qualifications set forth above and without prejudice to Kik's right to offer testimony at a hearing, trial, or otherwise in this action from any of the following persons on topics other than those specified below, or to offer testimony from any witness not identified below, the following list identifies, in alphabetical order, individuals likely to have discoverable information that Kik may use to support its defenses. Kik reserves the right to designate additional witnesses as additional persons become known to Kik as possessing discoverable information. The identification of any particular subject matter below does not constitute a representation that the individual has full knowledge of that subject area, or that his or her knowledge is limited to that subject area.

INDIVIDUALS/ ENTITIES	LAST KNOWN CONTACT INFORMATION	CONNECTION TO THE CASE	SUBJECT(S) OF INFORMATION
Eran Ben-Ari	May be contacted through Kik's counsel of record, Cooley LLP	Chief Product Officer for Kik in 2017. Worked on the Kik Messenger application and the creation, development, and launch of the Kin project.	Knowledge about the Kik Messenger application, the development of Kin's initial functionality within Kik at the time of the September 2017 token distribution event ("TDE"), Kik's product development incorporating Kin, the Kin whitepaper, and the development and execution of Kik's sale and distribution of Kin in 2017.
Jake Brukhman	Thomas Wagner Richard Levin Polsinelli LLP 1401 Lawrence Street, Ste 2300 Denver, CO 80202	Co-founder, CEO, and Managing Director at CoinFund.	CoinFund's role as a consultant for Kik in connection with Kin.

Erin Clift	May be contacted through Kik's counsel of record, Cooley LLP	Kik's Chief Marketing Officer in 2017. Worked on public communications regarding the Kin project.	Knowledge about Kik's marketing efforts, including the public message around Kik's 2017 pre-sale (the "Pre-sale") and Token Distribution Event ("TDE"). She worked with Kik's marketing and content teams to draft and publish communications about the Kin project.
CoinFund	Thomas H. Wagner Polsinelli 1401 Lawrence Street, Suite 2300 Denver, CO 80202	Kik's consultant	CoinFund's role as a consultant for Kik in connection with Kin.
Samuel Dowd	May be contacted through his counsel of record, Neil Smith, K&L Gates LLP	Purchased Kin in Kik's 2017 TDE	Details and circumstances surrounding Mr. Dowd's purchase and use of Kin and his participation in the network.
Alexander Felix	Thomas Wagner Richard Levin Polsinelli LLP 1401 Lawrence Street, Ste 2300 Denver, CO 80202	Managing Director and CIO at CoinFund	CoinFund's role as a consultant for Kik in connection with Kin, the circumstances and details of Mr. Felix's participation in Kik's pre-sale of contractual rights to accredited investors pursuant to SAFTs.
Brian Hamacheck	May be contacted through his counsel of record, Neil Smith, K&L Gates LLP	Co-Founder & CEO at Nearby	Details and circumstances surrounding Mr. Hamacheck's participation in the network.
Peter Heinke	May be contacted through Kik's counsel of record, Cooley LLP	Kik's Chief Financial Officer in 2017. Involved in the development and execution of the Kin project.	Knowledge about Kik's financial state, performance, development and execution of Kin project, communications with regulatory bodies, and Kik corporate governance.
Luc Hendriks	May be contacted through his counsel of record,	Purchased Kin in Kik's 2017 TDE	Details and circumstances surrounding Mr. Hendriks' purchase and use of Kin and

	Neil Smith, K&L Gates LLP		his participation in the network.
William Hinman	Stephen Schlegelmilch, David Mendel, Laura D'Allaird	SEC's Director of Corporation Finance, made numerous public statements regarding the SEC's regulatory approach to cryptocurrencies	SEC awareness of virtual currencies and initial token sales; SEC guidance and positions on virtual currencies, or lack thereof; communications regarding changes to or ambiguities in SEC's position concerning virtual currencies and/or crowdsales; SEC guidance and positions on the sale of pre-functional products or commodities; public statements concerning virtual currencies.
Paul Holland	May be contacted through his counsel of record, Goodwin Procter LLP	Kik Board of Directors in 2017. Involved in initial discussions about a cryptocurrency token and the development and launch of the Kin project.	Knowledge about the Kik Board of Directors, the cryptocurrency space generally, the inception of a cryptocurrency project for Kik, and the development and launch of the Kin token.
Jonathan Ingram	Stephen Schlegelmilch, David Mendel, Laura D'Allaird	Chief Legal Advisor for FinHub in the Division of Corporation Finance of the U.S. Securities and Exchange Commission;	SEC awareness of virtual currencies and initial token sales; SEC review of and comment on No-action letters and regulatory filings concerning the sale of virtual currencies; SEC guidance and positions on virtual currencies, or lack thereof; communications regarding changes to or ambiguities in SEC's position concerning virtual currencies and/or crowdsales; SEC guidance and positions on the sale of pre-functional products or commodities; public statements concerning virtual currencies.

Edward Livingston	May be contacted through Kik's counsel of record, Cooley LLP	Kik's Chief Executive Officer. Involved in creation, development, and launch of the Kin project.	Knowledge about forming the idea for Kin, Kik's financial state, performance, communications regarding Kin, development and execution of Kin project, communications with regulatory bodies, and Kik corporate governance.
Daniel Morehead	Craig S. Warkol Schulte Roth & Zabel LLP 919 Third Avenue New York, NY 10022	Chief Executive Officer and founder, Pantera Capital Management LP. Participated in Kik's pre-sale.	Communications with Kik, and the circumstances and details of Pantera's participation in Kik's pre-sale of contractual rights to accredited investors pursuant to SAFTs.
William Mougayar	May be contacted through his counsel of record, Murphy & McGonigle, P.C.	Member of Kin Foundation Board of Directors from June 2018 to present.	Knowledge about the Kin Ecosystem Foundation and development and launch of the Kin token.
Pantera Capital Management LP	Craig S. Warkol Schulte Roth & Zabel LLP 919 Third Avenue New York, NY 10022	Participated in Kik's pre-sale.	Communications with Kik, and the circumstances and details of its participation in Kik's pre-sale of contractual rights to accredited investors pursuant to SAFTs.
Michael Pazaratz	May be contacted through his counsel of record, Neil Smith, K&L Gates LLP	CEO, Rave	Details and circumstances surrounding Mr. Pazaratz's participation in the network.
Tanner Philp	May be contacted through Kik's counsel of record, Cooley LLP	Technical Advisor to CEO (Director, Corporate Development in 2017). Involved in creation, development, and launch of the Kin project.	Knowledge about forming the idea for Kin, Kik's financial state, performance, communications regarding Kin, development and execution of Kin project, communications with Kin economy partners, and Kik corporate governance.

William Raduchel	May be contacted through his counsel of record, Sidley Austin LLP	Advisor to Kik in 2017. Advised on creation, development, and launch of the Kin project.	Knowledge about the Kin Ecosystem Foundation and the development and launch of the Kin token.
Valerie Szczepanik	Stephen Schlegelmilch, David Mendel, Laura D'Allaird	Associate Director in Division of Corporation Finance; Senior Advisor for Digital Assets and Innovation	SEC awareness of virtual currencies and initial token sales; SEC review of and comment on No-action letters and regulatory filings concerning the sale of virtual currencies; enforcement actions concerning the offer or sale of virtual currencies; SEC guidance and positions on virtual currencies, or lack thereof; communications regarding changes to or ambiguities in SEC's position concerning virtual currencies and/or crowdsales; SEC guidance and positions on the sale of pre-functional products or commodities; public statements concerning virtual currencies.
Jay Weatherman	May be contacted through his counsel of record, Neil Smith, K&L Gates LLP	Founder, Kin Fit	Details and circumstances surrounding Mr. Weatherman's purchase of Kin and his participation in the network.
Fred Wilson	May be contacted through Kik's counsel of record, Cooley LLP	Kik Board of Directors in 2017. Involved in initial discussions about a cryptocurrency token and the development and launch of the Kin project.	Knowledge about the Kik Board of Directors, the cryptocurrency space generally, the inception of a cryptocurrency project for Kik, and the development and launch of the Kin token.
Phillip Yang	May be contacted through Kik's counsel of record, Cooley LLP	Senior Program Manager for Kik in 2017. Involved in	Knowledge about Kik's communications, marketing, and product

		the development and launch of stickers for the Kin project.	teams, including sourcing and launching stickers for the Kin project, communicating with potential partners related to stickers, and the initial public launch (“IPL”) for Kin.
SEC 30(b)(6) witness	Stephen Schlegelmilch and David Mendel	N/A	SEC’s regulatory investigation of Kik and the Kin Foundation; SEC awareness of virtual currencies; SEC review of and comment on No-action letters and regulatory filings concerning the sale of virtual currencies; communications with third parties concerning Kik; SEC notice of grounds for claims asserted; SEC guidance and positions on virtual currencies, or lack thereof; communications regarding changes to or ambiguities in SEC’s position concerning virtual currencies and/or crowdsales; SEC guidance and positions on the sale of pre-functional products or commodities.

II. DESCRIPTION OF DOCUMENTS (RULE 26(a)(1)(A)(ii))

Subject to the qualifications set forth above, Kik discloses the following categories of documents, data compilations, and tangible things that are in its possession, custody, or control and that Kik may use to support its defenses:

DOCUMENT DESCRIPTION BY CATEGORY	LOCATION(S)
Motions, pleadings, exhibits, and other public filings or documents exchanged in this litigation.	Law offices of Kik’s counsel of record, Cooley LLP

Documents produced by Kik to the Commission in the course of the Commission's investigation	Law offices of Kik's counsel of record, Cooley LLP
Documents relied on or produced by the Commission in its investigative file	Law offices of Kik's counsel of record, Cooley LLP
Recordings or transcripts of public statements made by Kik or Kik's executive team	Kik Interactive Inc., or the law offices of Kik's counsel of record, Cooley LLP

III. COMPUTATION OF DAMAGES (RULE 26(a)(1)(A)(iii))

Kik contends that it is not liable to the Commission for any damages, penalties, or remedial relief. Kik may seek attorneys' fees and costs in defending this action to the extent authorized by law. *Fed. Election Comm'n. v. Political Contributions Data, Inc.*, 995 F.2d 383, 385-87 (2d Cir. 1993); *SEC v. Morelli*, 1995 WL 9387, at *2-9 (S.D.N.Y. Jan. 11, 1995). The amount of Kik's attorneys' fees, expenses, and costs is increasing and the total amount that will ultimately be sought is presently unknown.

IV. INSURANCE AGREEMENTS (RULE 26(a)(1)(A)(iv))

Kik maintains directors and officers liability insurance under which certain insurance carriers may be liable to satisfy all or part of any judgment that may be entered in this action or to indemnify or reimburse for payments made to satisfy any judgment.

Dated: November 18, 2019

Respectfully submitted,

By: /s/ Patrick E. Gibbs

Patrick E. Gibbs (*Pro Hac Vice*)
Luke T. Cadigan (*Pro Hac Vice*)
Sarah M Lightdale (4395661)
Brett H. De Jarnette (*Pro Hac Vice*)

Cooley LLP
3175 Hanover Street
Palo Alto, CA 94304-1130
Phone: (650) 843-5000
Fax: (650) 849-7400
Email: pgibbs@cooley.com;
slightdal@cooley.com;
lcadigan@cooley.com;
bdejarnette@cooley.com

Attorneys for Defendant
KIK INTERACTIVE INC.

Kenneth R. Lench (*Pro Hac Vice*
forthcoming)

Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005-5793
Phone: (202) 879-5270
kenneth.lench@kirkland.com

Attorney for Defendant
KIK INTERACTIVE INC.

CERTIFICATE OF SERVICE

I, Jenna Bailey, am over the age of eighteen years, and not party to the within action. I solemnly swear and state that I served originals of the within document(s) on November 18, 2019.

**KIK'S SECOND SUPPLEMENTAL RULE 26(a)(1) INITIAL
DISCLOSURES**

BY ELECTRONIC DELIVERY

Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused such documents described herein to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Stephan Jacob Schlegelmilch
(schlegelmilch@sec.gov)
Securities and Exchange Commission
100 F Street NE, Mailstop 5971
Washington, DC 20549
Tel: (202) 551-4935
Fax: (202) 772-9292

David S. Mendel
(mendeld@sec.gov)
Securities and Exchange Commission
100 F Street NE, Mailstop 5971
Washington, DC 20549

Laura K. D'Allaird
(DallaIRD@sec.gov)
Securities and Exchange Commission
100 F. Street NE, Mailstop 5971
Washington, DC 20549
Tel: (202) 551-5475

/s/ *Jenna Bailey*

Jenna Bailey